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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/780,093	02/17/2004	Christopher S. Weaver	3111.003	9898

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EXAMINER

GARY, ERIKA A

ART UNIT	PAPER NUMBER
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2617

MAIL DATE	DELIVERY MODE
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09/14/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/780,093

Applicant(s)

WEAVER ET AL.

Examiner

Erika A. Gary

Art Unit

2617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 August 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

1. Claim 33 is objected to because of the following informalities: the claim identifier is incorrect as this claim was added in a previous amendment. Appropriate correction is required.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-22 and 25-32 are rejected under 35 U.S.C. 102(e) as being anticipated by Albanese, US Patent Application Publication Number 2004/0111360 (hereinafter Albanese).

Regarding claim 1, Albanese discloses a system for matching users by affinity and geographic location comprising: a portable communications terminal associated with a first user; a computing facility connected by a telecommunications link to said portable communications terminal; a location service capable of providing location information regarding said portable communications terminal to said computing facility,

means for storing information regarding affinity preferences of said first user, means for determining a match wherein said means for determining a match comprises means for calculating an affinity value; means for calculating a scaled distance; means for calculating a combined match value as a function of both said affinity value and said scaled distance; and means for comparing said combined match value with a threshold value to determine said match; and means for generating an alert message when a match is determined by said means for determining; and means for sending said alert message to said portable communications terminal [paragraphs 0072-0074].

Regarding claim 2, Albanese discloses said means for storing stores information regarding affinity preferences of a plurality of users [paragraph 0074].

Regarding claim 3, Albanese discloses said means for storing is located in said computing facility [paragraph 0074].

Regarding claims 4 and 5, Albanese discloses said portable communications terminal comprises a wireless telephone or a portable data terminal [paragraph 0073].

Regarding claim 6, Albanese discloses means for establishing a communications path between said portable communications terminal associated with said first user and a portable communications terminal associated with said second user [paragraph 0074].

Regarding claim 7, Albanese discloses means for storing information regarding security and privacy preferences of said first user; and means for enforcing said security and privacy preferences of said first user [paragraph 0034].

Regarding claim 8, Albanese discloses said enforcing comprises means for said first user to input assent to an exchange of information [paragraph 0034].

Regarding claim 9, Albanese discloses said security and privacy preferences comprise a list of prohibited matches [paragraphs 0034, 0053].

Regarding claim 10, Albanese discloses said security and privacy preferences comprise a list of conditions excluding a particular user from consideration by said means for determining [paragraph 0034, 0053].

Regarding claims 11 and 12, Albanese discloses said conditions comprise at least one or at least two selected from the group of dates, days, times, and geographic locations [paragraphs 0039, 0072, 0074].

Regarding claim 13, Albanese discloses said security and privacy preferences comprise a list of conditions prohibiting said means for sending from sending an alert message to said portable communications terminal [paragraph 0034, 0053].

Regarding claims 14 and 15, Albanese discloses said conditions comprise at least one or at least two selected from the group of dates, days, times, and geographic locations [paragraphs 0039, 0072, 0074].

Regarding claim 16, Albanese discloses means for storing alert messages generated by said means for generating but not sent by said means for sending [paragraph 0039].

Regarding claim 17, Albanese discloses said security and privacy preferences comprise first and second levels of security [paragraphs 0034, 0073].

Regarding claim 18, Albanese discloses said first level of security comprises conditions under which an alert message regarding a match between a first user and a

second user may be send to said second user without consent of said first user
[paragraph 0034].

Regarding claim 19, Albanese discloses said second level of security comprises conditions under which an alert message regarding a match between a first user and a second user may not be sent to said second user without consent of said first user [paragraphs 0034, 0031].

Regarding claim 20, Albanese discloses a notification message indicating that an affinity match is nearby and providing limited information regarding the matching user [paragraph 0074, 0075].

Regarding claim 21, Albanese discloses a notification message providing sufficient information to permit the second user receiving the message to identify the first user [paragraph 0074].

Regarding claim 22, Albanese discloses said location service maintains in a database a record of all affinity matches and associated communications [paragraphs 0072, 0074].

Regarding claim 25, Albanese discloses means for verifying the identity of a user [paragraph 0073].

Regarding claim 26, Albanese discloses the means for verifying comprises means for checking that the user has subscribed to wireless service at a single, unchanging geographic address for a period of one year or longer [paragraph 0073 (loyalty program)].

Regarding claims 27-29, Albanese discloses said means for verifying comprises examination of a governmentally issued identification document such as a driver's license or passport [paragraphs, 0020, 0073].

Regarding claim 30, Albanese discloses said means for verifying comprises biometric identification means [paragraph 0073].

Regarding claim 31, Albanese discloses a method for matching users by affinity and geographic location comprising the steps of: entering into a memory at least one affinity preference of a first user having a portable communications terminal; entering into a memory at least one affinity preference of a second user; determining a location of said first user; determining a location of a second user; calculating an affinity value between said first user and said second user; calculating a scaled distance between said first user and said second user; calculating a combined match value as a function of both said affinity value and said scaled distance; and comparing said combined match value with a threshold value to determine said match; generating an alert message when a match is determined by said determining a match step; and sending said alert message to a portable communications terminal of at least one of said first and second users [paragraphs 0072-0074].

Regarding claim 32, Albanese discloses the step of determining an identity of at least one of said first and second users [paragraphs 0073, 0074].

4. Claims 1 and 31 are rejected under 35 U.S.C. 102(e) as being anticipated by Fraccaroli, US Patent Application Publication Number 2004/0002348 (hereinafter Fraccaroli).

Regarding claim 1, Fraccaroli discloses a system for matching users by affinity and geographic location comprising: a portable communications terminal associated with a first user; a computing facility connected by a telecommunications link to said portable communications terminal; a location service capable of providing location information regarding said portable communications terminal to said computing facility, means for storing information regarding affinity preferences of said first user, means for determining a match wherein said means for determining a match comprises means for calculating an affinity value; means for calculating a scaled distance; means for calculating a combined match value as a function of both said affinity value and said scaled distance; and means for comparing said combined match value with a threshold value to determine said match; and means for generating an alert message when a match is determined by said means for determining; and means for sending said alert message to said portable communications terminal [paragraphs 0049, 0051, 0054, 0055, 0059].

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 23, 24, and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Albanese.

Regarding claims 23 and 24, Albanese does not specifically disclose that the database contains only summary information regarding each message or only complete copies of each message. However, the Examiner takes Official Notice that it is well known in the art for databases to save information in varying formats including saving limited information to conserve memory or saving all information when memory conservation is not an issue. It would have been obvious to one of ordinary skill in the art to include these features depending on how much information is desired to be retained.

Regarding claim 33, the Examiner takes Official Notice that it is well known in the art to use a quadratic combined value to calculate a combined match value. At the time of the invention, it would have been obvious to one of ordinary skill in the art to modify Albanese to include this feature. The motivation would have been to specifically point out the type of equation or algorithm used to determine a match value as it is inherent that some form of equation or algorithm must be used to determine said match value.

Response to Arguments

7. Applicant's arguments filed August 22, 2007 have been fully considered but they are not persuasive. Applicant argues that Albanese does not teach calculating a combined match value as a function of the affinity value and scaled distance. However,

the Examiner respectfully disagrees as Albanese teaches comparing algorithms that are performed as wide in time and geographic location as the profiles of the first and second users permit [paragraph 0072]. Albanese also teaches setting the profiles of the users to allow a particular match type within the profile to alert them if a match is in their vicinity. The system also determines if the two users are close enough related as per their profile settings [paragraph 0074]. Therefore, it is inherent that the system takes an affinity value as well as a scaled distance into account when determining a match. Therefore, the Examiner contends that Albanese teaches the claimed invention.

Applicant also argues that Fraccaroli does not teach calculating a combined match value as a function of the affinity value and scaled distance. However, the Examiner respectfully disagrees as the reference teaches determining a match based on the user's preferences (affinity value) and also upon proximity (scaled distance) [paragraphs 0049, 0051, 0054, 0055]. Hence, the limitations are read in the reference.

The affidavit filed on August 22, 2007 under 37 CFR 1.131 has been considered but is ineffective to overcome the Albanese (US Patent Application No. 2004/0111360) reference.

The evidence submitted is insufficient to establish a conception of the invention prior to the effective date of the Albanese reference. While conception is the mental part of the inventive act, it must be capable of proof, such as by demonstrative evidence or by a complete disclosure to another. Conception is more than a vague idea of how to solve a problem. The requisite means themselves and their interaction must also be comprehended. See *Mergenthaler v. Scudder*, 1897 C.D. 724, 81 O.G. 1417 (D.C. Cir.

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1897). The email correspondence provided does not contain proof of the claimed invention.


Conclusion

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Erika A. Gary whose telephone number is 571-272-7841. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Appiah can be reached on 571-272-7904. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

EAG
September 5, 2007


ERIKA A. GARY
PRIMARY EXAMINER